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COUNTY OF CLARK, CAROLE FALCONE
and PAULA HAMMACK

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SUSAN HOY as Special Administrator of the
ESTATE OF A.D.J., a male minor (November
17, 2003 – April 25, 2017), and SUSAN HOY as
Guardian Ad Litem of A.B.J., a female minor,
(December 21, 2005), DIJONAY THOMAS,
individually and as heir to A.D.J.,

Plaintiffs,

v.

PAUL D. JONES, individually; CAROLE
FALCONE, individually and in her official
capacity; PAULA HAMMACK, individually and
in her official capacity; COUNTY OF CLARK, a
political subdivision of the State of Nevada;
DOES I-X, individuals; and ROE
CORPORATIONS I-X; DOE CLARK COUNTY
DEPARTMENT OF FAMILY SERVICES
EMPLOYEES XI-XXX; individually and in their
official capacities; BOULDER II DE, LLC, a
Delaware Limited Liability Company dba
SIEGEL SUITES BOULDER 2; THE SIEGEL
GROUP NEVADA, INC., A Domestic
Corporation, dba THE SIEGEL GROUP;
BOULDER II LV HOLDINGS, LLC, A Nevada
Limited Liability Company; DOE EMPLOYEE
SIEGEL SUITES I-X,

Defendants.

CASE NO. 2:18-cv-01403-RFB-EJY

**COUNTY OF CLARK, CAROLE
FALCONE AND PAULA
HAMMACK’S: (1) OPPOSITION TO
PLAINTIFFS’ MOTION TO AMEND
COMPLAINT AFTER MOTION FOR
RECONSIDERATION DECISION;
AND (2) COUNTER-MOTION TO
STRIKE PLAINTIFFS’ MOTION TO
AMEND (ECF NO. 85) AND FOR
SANCTIONS**

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COME NOW Defendants COUNTY OF CLARK, CAROL FALCONE and PAULA HAMMACK (“Defendants”), by and through their attorneys of record, the law firm of Olson Cannon Gormley & Stoberski, and hereby submit their Opposition to Plaintiffs’ Motion to Amend Complaint after Motion for Reconsideration Decision (Motion); and (2) Counter-Motion to Strike Plaintiffs’ Motion to Amend (ECF No. 85) and for Sanctions. The Opposition and Counter-Motion are made and based upon all papers, pleadings and records on file herein, the attached Memorandum of Points and Authorities, and such oral argument, testimony and evidence as the Court may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs improperly move to amend the complaint after this Court granted Defendants summary judgment. There is no Rule or case law allowing that. Therefore, this Court should deny Plaintiffs’ Motion to Amend and/or strike it, and Defendants should be awarded fees and costs for having to respond thereto.

II. PROCEDURAL AND FACTUAL BACKGROUND

On 8/2/19, Defendants filed their Motion for Summary Judgment. (ECF No. 41). On 8/31/19, Plaintiffs filed their Opposition thereto and did not seek leave to amend the complaint. (ECF No. 47). On 9/20/19, Defendants filed their Reply thereto. (ECF No. 49). On 11/8/19, this Court granted Defendants summary judgment on all Plaintiffs’ claims. (ECF No. 53). On 2/6/2020, at the parties’ request, this Court entered an order staying some discovery. (ECF No. 59). On 6/30/2020, Plaintiffs filed their Motion for Reconsideration of the Order granting Defendants summary judgment. (ECF No. 69) On 7/14/2020, Defendants filed their Opposition thereto. (ECF No. 74) On 7/21/20220, Plaintiffs filed their Reply thereto. (ECF No. 76). On

1 10/7/2020, Plaintiffs filed their Motion to Amend without citation to any Rule or case allowing
 2 them to amend the complaint after an order granting summary judgment is entered as this Court
 3 did in this case. (ECF No. 85).

4 On 8/10/2020, Plaintiffs' attorney Elizabeth Do, Esq., contacted Defendants' attorney
 5 seeking a stipulation to allow Plaintiffs to amend the complaint as to the County Defendants.¹
 6 Defendants properly refused to stipulate to that since the Court granted them summary
 7 judgment.² On 8/25/2025, Plaintiffs' attorney Marjorie Hauf, Esq., contacted Defendants'
 8 attorney clarifying they were seeking a stipulation to amend the complaint as to the Siegel
 9 Defendants.³ Defendants advised Ms. Hauf that Ms. Doe previously requested a stipulation to
 10 amend the complaint as to the County Defendants, and Plaintiffs' attorney conceded there was
 11 no authority to amend the complaint against County Defendants.⁴ Defendants indicated
 12 Plaintiffs did not need a stipulation from County Defendants to amend the complaint as to the
 13 Siegel Defendants because it pertained to the co-defendants alone with which Plaintiffs attorney
 14 agreed.⁵ Thereafter, without any further notice to County Defendants, Plaintiffs filed their
 15 Motion to Amend knowing full well they had no authority whatsoever to amend as to County
 16 Defendants, let alone based on "efficiency," and ignoring their violation of this Court's Rules
 17 and the related burden on County Defendants including as to attorneys' fees and costs.⁶

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20 ¹ See Affidavit (Exhibit A).

21 ² Id.

22 ³ Id.

23 ⁴ Id.

24 ⁵ Id.

25 ⁶ Id.

1 **III. OPPOSITION TO PLAINTIFFS' MOTION TO AMEND**

2 Rule 15(a) applies to amendments before trial and Rule 15(b) applies to amendments
 3 during and after trial. Under Local Rule 15-1(a), "the moving party must attach the proposed
 4 amended pleading to a motion seeking leave of the court to file an amended pleading."
 5 Plaintiffs' Motion should be denied because there is no Rule or case law allowing for an
 6 amendment to a pleading after an order granting summary judgment is entered and Plaintiffs
 7 have not cited any; and because of Plaintiffs' failure to comply with the Local Rule, which
 8 precludes this Court from considering the relevant factors⁷, including whether the new claims
 9 might be futile. This Court has denied motions to amend that fail to comply with the Local
 10 Rule. See, e.g., Johnson v. Holms, 2020 WL 4004208, at *1 (D. Nev.) (denying *pro se*
 11 plaintiff's motion to amend for his failure to comply with Local Rule 15-1(a)) citing U.S. v 3
 12 Parcels in La Plata County, 919 F.Supp 1449 (D. Nev. 1995) ("This failure alone [(to submit the
 13 proposed amended pleading)] requires the court to deny Lawrence's motion to amend his claim
 14 and answer...It is therefore unnecessary...to address the merits of the proposed amended claim
 15 and counterclaim.) U.S. v. 3 Parcels in La Plata Cty., Colo., 919 F. Supp. 1449, 1457 (D. Nev.
 16 1995); Padilla v. Nevada, 2012 WL 3025135, at *2 (D. Nev.) This Court should do the same
 17 here. Plaintiffs simply cannot seek an order from this Court based on some unknown future
 18 event and unknown proposed pleading. Also, Plaintiffs know they have no legal basis to amend
 19 the complaint against County Defendants and, therefore, their motion, under the guise of
 20 "efficiency" is unfounded, improper, harassing and burdensome. Plaintiffs improperly are
 21 attempting to get an order from this Court as to the County Defendants that they have no basis
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 27 ⁷ The relevant factors are: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party;
 28 (4) futility in the amendment; and (5) if plaintiff has previously amended the complaint.
Johnson v. Holms, 2020 WL 4004208, at *1 (D. Nev.)

1 to obtain to keep the County Defendants in this case, and circumvent this Court's Order
 2 granting them summary judgment. Therefore, Plaintiffs' Motion should be denied.

3 **IV. COUNTER-MOTION TO STRIKE PLAINTIFFS' MOTION TO AMEND AND**
 4 **FOR SANCTIONS**

5 This Court has inherent authority to control its own docket, cases, and the conduct of
 6 those before it, including litigants and attorneys with economy of time and effort for itself, for
 7 counsel, and for litigants. Garcia v. Serv. Employees Int'l Union, 2019 WL 3802675, at *2 (D.
 8 Nev.) citing Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010); Landis
 9 v. N. Am. Co., 299 U.S. 248, 254–55 (1936). This Court's inherent power includes
 10 "jurisdiction to grant the motion to strike..." Ready Transp., Inc., *supra* citing Lazy Y Ranch
 11 Ltd. v. Behrens, 546 F.3d 580, 586–87, 588 (9th Cir.2008); Hambleton Bros. Lumber Co. v.
 12 Balkin Enters., Inc., 397 F.3d 1217, 1224–26 (9th Cir.2005). "The inherent powers are
 13 mechanisms for 'control necessarily vested in courts to manage their own affairs...to achieve
 14 the orderly and expeditious disposition of cases.'" Ready Transp., Inc., *supra* citing Chambers
 15 v. NASCO, Inc., 501 U.S. 32, 43, 111 S.Ct. 2123, 2132. (1991). This Court has enough to do
 16 without having its limited time and resources wasted and/or burdened by premature and
 17 unfounded motions based on some future, undetermined event. Plaintiffs' Motion was brought
 18 without any authority therefor and, as such, this Court should strike it.

19 Furthermore, under Rule 11, a pleading or paper signed by an attorney "certifies that
 20 the best of the person's knowledge, information, and belief, formed after an inquiry reasonable
 21 under the circumstances...(2) the claims, defenses, and other legal contentions are warranted
 22 by existing law...; (3) the factual contentions have evidentiary support or, if specifically so
 23 identified, will likely have evidentiary support after a reasonable opportunity for further
 24 investigation or discovery; and (4) the denials of factual contentions are warranted on the

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evidence or, if specifically so identified, are reasonably based on belief or a lack of information.” Plaintiffs Motion violates Rule 11 because Plaintiffs have no factual or legal basis to file another amended pleading against County Defendants, which they conceded⁸, or to do that in anticipation of some unknown future event, i.e. this Court’s decision on the pending Motion for Reconsideration. Also, Plaintiffs have acted in bad faith because Plaintiffs represented to Defendants they wanted to amend the complaint as to the Siegel Defendants, which this Court allowed (ECF No. 63, p. 26) and, thereafter, did otherwise and moved to amend as to the County Defendants, too.⁹ As such, sanctions are warranted because Plaintiffs have filed an improper motion in bad faith, and harassed and burdened the County Defendants, including by causing them to incur unnecessary fees and costs in responding to Plaintiffs’ Motion. Chambers, 501 U.S. 32, 41, 111 S. Ct. 2123, 2131 (1991). This Court can also sanction Plaintiffs on its inherent power in imposing sanctions, including as to bad faith conduct when the party’s conduct is not within the reach of a rule or statute. NASCO, Inc. v. Calcasieu Television & Radio, Inc., 894 F.2d 696, 702-03 (5th Cir. 1990), aff’d sub nom. Chambers, supra. This inherent implied power derives from the need to make the court function and permits a court to award fees and litigation costs. Therefore, this Court should strike Plaintiffs’ Motion and award County Defendants attorneys’ fees and costs for having to respond thereto. The egregiousness of Plaintiffs’ Motion as to the County Defendants is highlighted by the undisputed fact that this Court granted them summary judgment on all

⁸ See Affidavit (Exhibit A).

⁹ Id.

1 claims, whereas this Court granted Plaintiffs leave to amend as to the Siegel Defendants; and
2 on Plaintiffs' attempt to circumvent this Court's clear ruling as to summary judgment.
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4 DATED this 21st day of October, 2020.

5 OLSON CANNON GORMLEY
6 & STOBERSKI

7 */s/ Felicia Galati*

8 By _____
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13 Attorneys for Defendants
14 COUNTY OF CLARK, CAROLE
15 FALCONE and PAULA HAMMACK
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CERTIFICATE OF SERVICE

On the 21st day of October, 2020, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **COUNTY OF CLARK, CAROLE FALCONE AND PAULA HAMMACK'S: (1) OPPOSITION TO PLAINTIFFS' MOTION TO AMEND COMPLAINT AFTER MOTION FOR RECONSIDERATION DECISION; AND (2) COUNTER-MOTION TO STRIKE PLAINTIFFS' MOTION TO AMEND (ECF NO. 85) AND FOR SANCTIONS** to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective June 1, 2014, and or mailed:

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/s/ Erika Parker

An Employee of Olson Cannon Gormley
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